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Legend

Distributing 2 =

Distributing 1 =

Controlled 2 =

Controlled 1 =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Sub 8 =

LLC 1 =

.

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

Acquisition Target =

GP =

Trust =

Investment Banks =

Business A =

Business B =

Business C =

Business D =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

k =

l =

m =

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o =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear :

This letter responds to your June 14, 2006 letter requesting rulings as to certain federal income tax consequences of a series of proposed and partially completed transactions. The information submitted in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayers and accompanied by penalty of perjury statements executed by the appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Moreover, no determination has been made regarding whether the Internal Split-Off and the External Distribution (both defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) are being used principally as a device for the distribution of the earnings and profits of Distributing 2, Distributing 1, Controlled 2, or Controlled 1 (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in Distributing 2, Distributing 1, Controlled 2, or Controlled 1 (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing 2 is a holding company and the common parent of an affiliated group of corporations that files a consolidated federal income tax return. Distributing 2 has a single class of publicly-traded voting common stock outstanding (the "Distributing 2 Common Stock") and no preferred stock outstanding. No shareholder reports owning more than five percent of the Distributing 2 Common Stock. Distributing 2, through its subsidiaries, engages in Business A, Business B, Business C, and Business D.

Distributing 2 directly owns all of the outstanding stock of each of Sub 1, Sub 2, and Sub 3 and the outstanding membership interest of LLC 1 (an entity disregarded as separate from Distributing 2 for federal income tax purposes). Prior to the Pre-Transaction Restructuring set forth below, Distributing 2 directly owned a% (more than 80%) of the outstanding stock of Distributing 1, while the remaining b% of Distributing

1's stock was directly owned by Sub 2. Distributing 1 has a single class of voting common stock outstanding and no preferred stock outstanding. Distributing 1 directly owns all of the outstanding stock of each of Sub 4 and Sub 5. Sub 5 directly owns all of the outstanding stock of Controlled 1 and Sub 6, a corporation formed on Date 1. Controlled 1 directly owns all of the outstanding stock of Sub 7. Sub 7 directly owns a c% general partnership interest in GP, while Sub 8 directly owned the other d% interest in GP prior to the Pre-Transaction Restructuring below. Sub 3 directly owns all of the outstanding stock of Sub 8. Pursuant to a merger agreement dated as of Date 2, Acquisition Target was merged into LLC 1 on Date 3 (the "Merger").

Controlled 2 is a corporation that was newly formed as a wholly-owned subsidiary of Distributing 2 in order to facilitate the External Distribution. Controlled 2 has a single class of voting common stock outstanding (the "Controlled 2 Common Stock"). In connection with the formation of Controlled 2, Distributing 2 received all of the shares of Controlled 2 Common Stock in exchange for a nominal cash contribution. At the time of the External Distribution, Controlled 2 and its subsidiaries will be engaged in the active conduct of Business D. At the time of the Internal Split-Off, Controlled 1 and its subsidiaries will be engaged in the active conduct of Business D.

Financial information has been submitted which indicates that each of the portion of Business A conducted by Sub 1 (the "Sub 1 Business"), Business D, and the portion of Business A conducted by Sub 4 (the "Sub 4 Business") has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

Distributing 2's management believes that the separation of Business D from Distributing 2's other business segments will serve a number of corporate business purposes. Accordingly, they have proposed and partially completed the following series of transactions.

Pre-Transaction Restructuring

The following steps occurred as of Date 4:

- (i) Sub 8 contributed its d% interest in GP to LLC 2, a newly-formed single member limited liability company that was disregarded as separate from Sub 8 for federal income tax purposes.
- (ii) Sub 8 transferred its membership interest in LLC 2 to Distributing 1 in exchange for common stock of Distributing 1 of approximate equal value. As a result of this transfer, Sub 8 owned e% of the outstanding stock of Distributing 1, Distributing 2's a% of the outstanding stock of Distributing 1 was reduced to f% (still more than 80%), and Sub 2's b% of the outstanding stock of Distributing 1 was reduced to g%.

- (iii) Distributing 1 contributed its membership interest in LLC 2 to Sub 5. Sub 5 then contributed the membership interest in LLC 2 to Controlled 1.
- (iv) Controlled 1 contributed the membership interest in LLC 2 to Sub 7.

Proposed Transactions

Except as set forth below, the following transactions have been proposed to occur on approximately the same date as the External Distribution:

- (v) Sub 1 will convert into a limited liability company ("LLC 3") disregarded as separate from its owner, Distributing 2, for federal income tax purposes.
- (vi) Sub 4 will convert into a limited liability company ("LLC 4") disregarded as separate from its owner, Distributing 1, for federal income tax purposes.
- (vii) Sub 5 will convert into a limited liability company ("LLC 5") disregarded as separate from its owner, Distributing 1, for federal income tax purposes.
- (viii) LLC 5 will distribute to Distributing 1 certain of its assets, including its equity in various entities.
- (ix) For federal income tax purposes, Distributing 1 will contribute certain assets, including the stock of Sub 6, to Controlled 1 ("Contribution 1").
- (x) For federal income tax purposes, Distributing 1 will distribute all of the Controlled 1 stock to Distributing 2 in exchange for a portion of Distributing 2's stock of Distributing 1 of approximate equal value (the "Internal Split-Off").
- (xi) For federal income tax purposes, Distributing 2 will contribute ("Contribution 2") the Controlled 1 stock and any other assets associated with Business D to Controlled 2 in exchange for: (1) additional shares of Controlled 2 Common Stock, (2) approximately \$h in cash (the "Special Distribution"), and (3) debt securities to be issued by Controlled 2 with a total face amount of approximately \$i (the "Controlled 2 Securities") that will consist of (a) senior unsecured notes, and (b) a senior secured term loan.
- (xii) Except for the Trust Controlled 2 Common Stock (as defined herein), Distributing 2 will distribute all of the outstanding Controlled 2 Common Stock pro rata to the holders of the Distributing 2 Common Stock (the "External Distribution").

- (xiii) Distributing 2 will transfer all of the Controlled 2 Securities received by it in Contribution 2 to the Investment Banks in exchange for debt of Distributing 2 (including debt of any entity disregarded as separate from Distributing 2 for federal income tax purposes) owed to unrelated third parties at the time of the External Distribution (the "Distributing 2 Debt"), which the Investment Banks, acting as principals for their own accounts, will have acquired in the secondary market at least j days prior to the External Distribution (the "Debt Exchange"). Distributing 2 expects to consummate the Debt Exchange in accordance with an exchange agreement entered into by it and the Investment Banks no sooner than k days after the Investment Banks acquire the Distributing 2 Debt in the secondary market, pursuant to which the parties will agree to exchange an amount of Distributing 2 Debt to be determined by the parties bargaining at arm's length for the Controlled 2 Securities received by Distributing 2 in Contribution 2.
- (xiv) As promptly as practicable after the External Distribution (but in no event later than l after the External Distribution), Distributing 2 will, pursuant to the plan of reorganization, use the proceeds of the Special Distribution to repay or redeem Distributing 2 Debt and/or to repurchase shares of Distributing 2 Common Stock pursuant to open-market purchases meeting the requirements of Section 4.05(1)(b) of Revenue Procedure 96-30, 1996-1 C.B. 696.

In conjunction with the transactions described above, Distributing 2 and Controlled 2 will enter into several agreements relating to the separation of Business D from Distributing 2's other businesses and certain continuing transactions between the companies, including certain transitional agreements and a tax sharing agreement.

Representations

The following representations have been submitted with respect to Contribution 1 and the Internal Split-Off:

- (a) Indebtedness (if any) owed by Controlled 1 to Distributing 1 after the Internal Split-Off will not constitute stock or securities.
- (b) The fair market value of the Controlled 1 stock to be received by Distributing 2 will be approximately equal to the fair market value of the stock of Distributing 1 surrendered by Distributing 2 in the Internal Split-Off.
- (c) No part of the consideration to be distributed by Distributing 1 in the Internal Split-Off will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

- (d) In accordance with Notice 2006-81, Distributing 2 will be deemed to have elected not to apply the transitional rule of § 355(b)(3)(C). Therefore, each of Distributing 2 and Controlled 2 will treat all members of its respective separate affiliated group as defined in § 355(b)(3)(B) (hereinafter "SAG") as one corporation in determining whether it meets the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business.
- (e) The five years of financial information submitted on behalf of Business D conducted by Controlled 1 and its subsidiaries (each a member of the Distributing 2 SAG immediately before and following the Internal Split-Off) is representative of the present business operations of Business D, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (f) The five years of financial information submitted on behalf of the Sub 4 Business conducted by Sub 4 (a member of the Distributing 2 SAG immediately before and following the Internal Split-Off) is representative of the present business operations of Sub 4, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (g) Following the Internal Split-Off, LLC 4 (formerly Sub 4) and Controlled 1, directly and through its controlled subsidiaries, will continue the active conduct of their respective businesses, independently and with their separate employees.
- (h) The Internal Split-Off is being carried out for the corporate business purpose of making possible the External Distribution and is motivated, in whole or substantial part, by this corporate business purpose.
- (i) The Internal Split-Off is not being used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.
- (j) No intercorporate debt will exist between Distributing 1 (and its subsidiaries) and Controlled 1 (and its subsidiaries) at the time of, or subsequent to, the Internal Split-Off, except for payables arising under transitional agreements or otherwise in the ordinary course of business.
- (k) No property will be transferred by Distributing 1 to Controlled 1 for which an investment credit allowed under § 46 has been or will be claimed.
- (l) Immediately before the Internal Split-Off, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction treasury regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 1's excess loss account, if any, with respect to its stock of Controlled 1 will be included in income immediately before the

Internal Split-Off to the extent required by applicable treasury regulations (see § 1.1502-19).

- (m) Except for certain payments that will be made in connection with the tax sharing agreement and certain service agreements that are transitional in nature, payments made in connection with any continuing transactions between Distributing 1 (and its subsidiaries) and Controlled 1 (and its subsidiaries) following the Internal Split-Off, will be for fair market value based on terms and conditions comparable to those that would be arrived at by the parties bargaining at arm's length.
- (n) No two parties to the Internal Split-Off are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
- (o) For purposes of § 355(d), immediately after the Internal Split-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Internal Split-Off.
- (p) For purposes of § 355(d), immediately after the Internal Split-Off, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was either (1) acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Internal Split-Off or (2) attributable to distributions on Distributing 1 stock that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Internal Split-Off.
- (q) The Internal Split-Off is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled 1 (including any predecessor or successor of any such corporation).
- (r) Immediately after the Internal Split-Off, the External Distribution, and the Debt Exchange, neither Distributing 1 nor Controlled 1 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (s) The total adjusted basis and the fair market value of the assets to be transferred by Distributing 1 to Controlled 1 in Contribution 1 will equal or exceed the sum of: (a) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 1 in Contribution 1, (b) the amount of

any liabilities owed to Controlled 1 by Distributing 1 (if any) that are discharged or extinguished in Contribution 1, and (c) the amount of any cash and the fair market value of any property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 1 from Controlled 1 (if any) in Contribution 1. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after Contribution 1.

- (t) Any liabilities assumed (within the meaning of § 357(d)) by Controlled 1 in Contribution 1 were incurred in the ordinary course of business and are associated with the assets transferred to Controlled 1 in connection with Contribution 1.
- (u) The total fair market value of the assets transferred to Controlled 1 by Distributing 1 in Contribution 1 will equal or exceed the aggregate adjusted basis of the transferred assets.

The following representations have been submitted with respect to Contribution 2, the External Distribution, and the Debt Exchange:

- (v) Other than the Controlled 2 Securities to be held by Distributing 2 prior to their distribution to the Investment Banks, indebtedness (if any) owed by Controlled 2 to Distributing 2 after the External Distribution will not constitute stock or securities.
- (w) Except for the receipt of Controlled 2 Common Stock by holders of restricted Distributing 2 Common Stock who have not made a valid election under § 83(b), no part of the consideration to be distributed by Distributing 2 with respect to the Distributing 2 Common Stock will be received by any shareholder of Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- (x) No part of the consideration to be distributed by Distributing 2 will be received by a security holder as an employee or in any capacity other than that of a security holder of Distributing 2.
- (y) The total adjusted basis and the fair market value of the assets that Distributing 2 will transfer to Controlled 2 in Contribution 2 will equal or exceed the sum of: (a) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in the exchange, (b) the amount of any liabilities owed to Controlled 2 by Distributing 2 (if any) that are discharged or extinguished in the exchange, and (c) the amount of any cash and the fair market value of any property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 2 from Controlled 2 in the exchange. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after Contribution 2.

- (z) Any liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in the proposed transactions were incurred in the ordinary course of business and are associated with the assets being transferred.
- (aa) The total fair market value of the assets transferred to Controlled 2 by Distributing 2 in Contribution 2 will equal or exceed the aggregate adjusted basis of the transferred assets.
- (bb) Trust, which was established for the primary purpose of providing special awards for heroic acts or other special meritorious service to the company or the community at large, holds approximately m shares of Distributing 2 Common Stock constituting n% (less than 1%) of the outstanding Distributing 2 Common Stock. Distributing 2 will dispose of the Controlled 2 Common Stock received in the External Distribution by Trust (such stock, the "Trust Controlled 2 Common Stock" and the receipt of such stock by Trust, the "Retention") as soon as practicable after the External Distribution, and in any event, not later than o days after the External Distribution.
- (cc) The Trust Controlled 2 Common Stock will be voted in proportion to the votes cast by other shareholders of Controlled 2.
- (dd) Trust has been properly treated as a grantor trust pursuant to § 671 at all times since its formation.
- (ee) The five years of financial information submitted on behalf of the Sub 1 Business conducted by Sub 1 (a member of Distributing 2's SAG) is representative of the present business operations of Sub 1, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (ff) The five years of financial information submitted on behalf of Business D conducted by Controlled 1 and its subsidiaries (all of which will be members of Controlled 2's SAG immediately following the External Distribution) is representative of the present business operations of Business D, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- (gg) Following the External Distribution, LLC 3 (formerly Sub 1) and Controlled 2, directly and through its controlled subsidiaries, will continue the active conduct of their respective businesses, independently and with their separate employees.
- (hh) The External Distribution is being carried out for the corporate business purposes listed below and is motivated, in whole or substantial part, by one or more of these corporate business purposes: (1) to facilitate each of Distributing 2's and Controlled 2's expansion and growth by allowing each company to focus on its respective core businesses; (2) to optimize the

- capital structures for each of Distributing 2 and Controlled 2 and to increase the financial flexibility of Distributing 2; (3) to enhance the ability of Controlled 2 to execute a potential acquisition strategy more effectively by creating a more attractive acquisition currency; and (4) to enhance the efficiency and effectiveness of Controlled 2's equity-linked compensation.
- (ii) The External Distribution is not being used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 2 or both.
 - (jj) No intercorporate debt will exist between Distributing 2 (and its subsidiaries) and Controlled 2 (and its subsidiaries) at the time of, or subsequent to, the External Distribution, except for the Controlled 2 Securities to be issued to Distributing 2 in Contribution 2 and exchanged with the Investment Banks in the Debt Exchange and payables arising under transitional agreements or otherwise in the ordinary course of business.
 - (kk) No property will be transferred by Distributing 2 to Controlled 2 for which an investment credit allowed under § 46 has been or will be claimed.
 - (ll) Immediately before the External Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction treasury regulations (see § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published by T.D. 8597). Further, Distributing 2's excess loss account, if any, with respect to its Controlled 2 Common Stock will be included in income immediately before the External Distribution to the extent required by applicable treasury regulations (see § 1.1502-19).
 - (mm) Except for certain payments that will be made in connection with the tax sharing agreement and certain service agreements that are transitional in nature, payments made in connection with any continuing transactions between Distributing 2 (and its subsidiaries) and Controlled 2 (and its subsidiaries) following the External Distribution, will be for fair market value based on terms and conditions comparable to those that would be arrived at by the parties bargaining at arm's length.
 - (nn) No two parties to the External Distribution are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).
 - (oo) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period

(determined after applying § 355(d)(6)) ending on the date of the External Distribution.

- (pp) For purposes of § 355(d), immediately after the External Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 stock, that was either (1) acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution or (2) attributable to distributions on Distributing 2 stock that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the External Distribution.
- (qq) The External Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled 2 (including any predecessor or successor of any such corporation).
- (rr) The Controlled 2 Securities issued to Distributing 2 in Contribution 2 will qualify as "securities" within the meaning of § 361(a).
- (ss) Distributing 2 will transfer the proceeds of the Special Distribution to holders of Distributing 2 Debt and/or holders of Distributing 2 Common Stock pursuant to the plan of reorganization. Distributing will deposit the proceeds of the Special Distribution in a segregated account until they are used as described above.
- (tt) The payment of cash in lieu of fractional shares of Controlled 2 Common Stock by the distribution agent will be solely for the purpose of avoiding the expense and inconvenience of issuing and maintaining fractional shares and will not represent separately bargained for consideration. The total cash that will be paid in connection with the External Distribution in lieu of fractional shares of Controlled 2 Common Stock is not intended to exceed one percent of the total consideration that will be distributed to holders of Distributing 2 Common Stock in the External Distribution. It is intended that no Distributing 2 shareholder will receive cash in lieu of fractional shares in an amount equal to or greater than the value of one full share of Controlled 2 Common Stock.
- (uu) Immediately after the External Distribution (as defined in § 355(g)(4)) and the Debt Exchange, neither Distributing 2 nor Controlled 2 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).
- (vv) The sum of (a) the aggregate amount of Distributing 2 Debt exchanged for Controlled 2 Securities in the Debt Exchange and (b) the aggregate

amount of Distributing 2 Debt repaid or redeemed with the Special Distribution will not exceed the aggregate amount of indebtedness of Distributing 2's affiliated group (as defined in § 1504(a)) owed to unrelated third parties at the close of business on Date 5, the last full business day before the date on which Distributing 2's Board of Directors authorized Distributing 2 to pursue actively the divestiture of Business D.

Rulings

Based solely on the information and representations submitted, we rule as follows regarding Contribution 1 and the Internal Split-Off:

- (1) Contribution 1, together with the Internal Split-Off, will be a reorganization under § 368(a)(1)(D). Distributing 1 and Controlled 1 will each be "a party to a reorganization" under § 368(b).
- (2) No gain or loss will be recognized by Distributing 1 in Contribution 1 (§§ 357(a) and 361(a)).
- (3) No gain or loss will be recognized by Controlled 1 in Contribution 1 (§ 1032(a)).
- (4) Controlled 1's basis in each asset received in Contribution 1 will be the same as the basis of that asset in the hands of Distributing 1 immediately before its transfer (§ 362(b)).
- (5) Controlled 1's holding period in each asset received in Contribution 1 will include the period during which Distributing 1 held the asset (§ 1223(2)).
- (6) No gain or loss will be recognized by Distributing 1 on the Internal Split-Off (§ 361(c)).
- (7) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) Distributing 2 on the Internal Split-Off (§ 355(a)).
- (8) The basis of the Controlled 1 stock held by Distributing 2 immediately after the Internal Split-Off will equal the basis of the Distributing 1 stock surrendered by Distributing 2 in the exchange (§ 358(a)).
- (9) The holding period of the Controlled 1 stock received by Distributing 2 in the Internal Split-Off will include the holding period of the Distributing 1 stock surrendered in exchange therefor, provided the Distributing 1 stock is held as a capital asset on the date of the exchange (§ 1223(1)).
- (10) Earnings and profits (if any) will be allocated between Distributing 1 and Controlled 1 in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).

Based solely on the information and representations submitted, we rule as follows regarding Contribution 2, the External Distribution, and the Debt Exchange:

- (11) Contribution 2, together with the External Distribution, will be a reorganization under § 368(a)(1)(D). Distributing 2 and Controlled 2 will each be "a party to a reorganization" under § 368(b).
- (12) No gain or loss will be recognized by Distributing 2 on its receipt of Controlled 2 Common Stock, the Controlled 2 Securities, and the Special Distribution in Contribution 2 (§ 357(a), § 361(a) and (b)).
- (13) No income, gain, loss, or deduction will be recognized by Distributing 2 with respect to the Controlled 2 Securities and the Debt Exchange other than any (i) deductions attributable to the fact that Distributing 2 Debt may be redeemed at a premium, (ii) income attributable to the fact that Distributing 2 Debt may be redeemed at a discount, (iii) interest expense accrued with respect to Distributing 2 Debt, and (iv) income or gain realized on the transfer of the Controlled 2 Securities in the Debt Exchange attributable to appreciation in the Controlled 2 Securities while held by Distributing 2 after the External Distribution.
- (14) No gain or loss will be recognized by Controlled 2 in Contribution 2 (§ 1032(a)).
- (15) Controlled 2's basis in each asset received in Contribution 2 will be the same as the basis of that asset in the hands of Distributing 2 immediately before its transfer (§ 362(b)).
- (16) Controlled 2's holding period in each asset received in Contribution 2 will include the period during which Distributing 2 held the asset (§ 1223(2)).
- (17) No gain or loss will be recognized by Distributing 2 on the External Distribution (§ 361(c)).
- (18) No gain or loss will be recognized by (and no amount will otherwise be included in the income of) the Distributing 2 shareholders upon their receipt of the Controlled 2 Common Stock, except for holders of restricted Distributing 2 Common Stock who have not made a valid election under § 83(b) (§ 355(a)).
- (19) Each Distributing 2 shareholder's basis in a share of Distributing 2 Common Stock (as adjusted under § 1.358-1) shall be allocated between the share of Distributing 2 Common Stock with respect to which the External Distribution is made and the share of Controlled 2 Common Stock (or allocable portions thereof) received with respect to the share of Distributing 2 Common Stock in proportion to their fair market values. If one share of Controlled 2 Common Stock is received in respect of more than one share of Distributing 2 Common Stock, the basis of each share of Distributing 2 Common Stock must be allocated to the shares of Controlled 2 Common Stock received in a manner that reflects that, to the extent possible, a share of Controlled 2 Common Stock is received in respect of shares of Distributing 2 Common Stock acquired on the same

date and at the same price. If a Distributing 2 shareholder that purchased or acquired shares of Distributing 2 Common Stock on different dates or at different prices is not able to identify which particular share of Controlled 2 Common Stock (or portion thereof) is received with respect to a particular share of Distributing 2 Common Stock, the shareholder may designate which particular share of Controlled 2 Common Stock (or portion thereof) is received with respect to a particular share of Distributing 2 Common Stock, provided the designation is consistent with the terms of the External Distribution.

- (20) Each Distributing 2 shareholder's holding period in the Controlled 2 Common Stock received will include the holding period of the Distributing 2 Common Stock with respect to which the distribution of the Controlled 2 Common Stock is made, provided that the Distributing 2 Common Stock is held as a capital asset on the date of the External Distribution (§ 1223(1)).
- (21) Earnings and profits (if any) will be allocated between Distributing 2 and Controlled 2 in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).
- (22) The Retention is not in pursuance of a plan having as one of its principal purposes the avoidance of federal income tax within the meaning of § 355(a)(1)(D)(ii).
- (23) A Distributing 2 shareholder who receives cash in lieu of a fractional share of Controlled 2 Common Stock will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above in ruling (19), and the amount of cash received (§ 1001). Any gain or loss will be treated as capital gain or loss, provided the fractional share of stock is held as a capital asset on the date of the External Distribution (§§ 1221 and 1222).

Caveats

We express no opinion about the tax treatment of the above transactions under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the above transactions that are not specifically covered by the above rulings. In particular, we express no opinion regarding:

- (i) Whether the Internal Split-Off and the External Distribution satisfy the business purpose requirement of § 1.355-2(b);
- (ii) Whether the Internal Split-Off and the External Distribution are being used principally as a device for the distribution of the earnings and profits of Distributing 2, Distributing 1, Controlled 2, or Controlled 1 (see § 355(a)(1)(B) and § 1.355-2(d));

- (iii) Whether the Internal Split-Off and the External Distribution are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in Distributing 2, Distributing 1, Controlled 2, or Controlled 1 (see § 355(e) and § 1.355-7);
- (iv) The federal income tax treatment of the Merger;
- (v) The federal income tax consequences of any payments made for less than fair market value in connection with the tax sharing agreement and certain service agreements that are transitional in nature; and
- (vi) The federal income tax treatment of the transactions described in steps (i), (ii), (iii), (iv), (v), (vi), (vii), and (viii).

Procedural Statements

This letter is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any federal income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

Under a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Richard K. Passales
Senior Counsel, Branch 4
Office of Associate Chief Counsel (Corporate)